

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Land Division  
Honolulu, Hawaii 96813

October 23, 2009

Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii

Ref. No.: LODS-28422

HAWAII

Consent to Assign Perpetual, Non-Exclusive Access and Utility Easement [LODS-28422], Zachary G. Shuman and J. P. Morgan Trust Company of Delaware, Successor Co-Trustees of the Cyril Thomson Mitchell Trust, under that certain unrecorded Trust Agreement dated August 19, 1983, as amended, as Assignor, to Kiholo Bay, LLC, Assignee; Amend Land Office Deed No. S-28422, Puuwaawaa, North Kona, Hawaii, Tax Map Key: 3<sup>rd</sup>/ 7-1-02: portion of 8.

APPLICANT:

Zachary G. Shuman and J. P. Morgan Trust Company, Successor Co-Trustees of the Cyril Thomson Mitchell Trust, under that certain unrecorded Trust Agreement dated August 19, 1983, as amended, as Assignor, to Kiholo Bay, LLC, a Delaware limited liability company, as Assignee.

LEGAL REFERENCE:

Section 171-36(a)(5), Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands situated at Kiholo, North Kona, Hawaii, identified by Tax Map Key: 3<sup>rd</sup>/ 7-1-02: portion of 8, as shown on the attached map labeled Exhibit A.

AREA:

7.437 acres, more or less.

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution:

YES \_\_\_\_\_ NO   x  

CHARACTER OF USE:

Right, privilege, and authority to use, repair, construct, maintain a roadway for ingress and egress and utility purposes.

CONSIDERATION:

Gratis

RECOMMENDED PREMIUM:

Not applicable as the lease does not allow for a premium.

DCCA VERIFICATION:

ASSIGNOR:

Not applicable.

As Co-Trustees of the Cyril Thomson Mitchell Trust, Zachary G. Shuman and J.P. Morgan Trust Company is not required to register with DCCA.

ASSIGNEE:

Place of business registration confirmed: YES   x   NO

Registered business name confirmed: YES   x   NO

Good standing confirmed: YES   x   NO

REMARKS:

At its meeting of June 24, 1997, Item D-7, the Board of Land and Natural Resources approved the direct sale of a perpetual, non-exclusive easement to Patrick T. Fujieki, Successor Trustee of the Cyril Thomson Mitchell Trust for access and utility purposes at Puuwaawaa, North Kona, Hawaii, Tax Map Key: 3<sup>rd</sup>/ 7-1-02: portion of 8.

By letter dated July 22, 2009, Zachary G. Schuman and Anne L. Stallman Dougherty of J.P. Morgan Trust Company, as Successor Co-Trustees of the Cyril Thomson Mitchell Trust, requested the assignment of Land Office Deed No. S-28422, to Kiholo Bay, LLC. The assignment of the easement is being requested due to the recent sale of the affected private property, identified as Tax Map Key: 3<sup>rd</sup>/ 7-1-02: 4 & 7, which utilizes the subject easement as its legal access.

Staff reviewed the file and can report that for the past two (2) years, all terms and conditions of the easement have been satisfied. The Grantor has never been cited for any illegal or unlawful activity on the State property.

Kiholo Bay, LLC, as Assignee, has not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

There is no outstanding rental reopening issues.

No agency or interest groups were solicited for comment, as there will be no new disposition or change in land use.

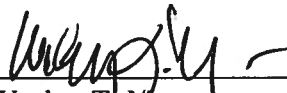

Staff is further recommending that the easement document be amended to include a condition allowing the easement to run with the land, to inure to the benefit of the private property described above.

**RECOMMENDATION:** That the Board:


- A. Consent to the assignment of Land Office Deed No. S-28,422 from the Cyril Thomson Mitchell Trust, under that certain unrecorded Trust Agreement dated August 19, 1983, as amended, as Assignor, to Kiholo Bay, LLC, as Assignee, subject to the following:
  1. The standard terms and conditions of the most current consent to assignment form, as may be amended from time to time;
  2. Review and approval by the Department of the Attorney General; and
  3. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
- B. Amend Land Office Deed No. S-28,422 to include the following condition:
  1. The easement shall run with the land and shall inure to the benefit of the real property described as Tax Map Key: (3) 7-1-02: 4 & 7, provided however: (1) it is specifically understood and agreed that the easement shall immediately cease to run with the land upon the expiration or other termination or abandonment of the easement; and (2) if and when the easement is sold, assigned, conveyed, or otherwise transferred, the Grantee shall notify the Grantee's successors or assigns of the insurance requirement in writing, separate and apart from this easement document.

2. Review and approval by the Department of the Attorney General; and
3. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,

  
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Wesley T. Matsunaga  
Land Agent 

APPROVED FOR SUBMITTAL:

  
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Laura H. Thielen, Chairperson 